

11 FCC Rcd 8090, \*8103; 1996 FCC LEXIS 3623, \*\*31;  
3 Comm. Reg. (P & F) 1247

subscribers are also the LECs' customers, and, as such, the defendants have a general obligation to protect these customers from fraud and other deceptive or misleading practices that could adversely affect their telephone service. As the carriers responsible for activating or terminating or, in this case, switching their customers' services, LECs such as Bell Atlantic and NYNEX may often provide the best line of defense against practices inimical to their customers' interests. Hence, defendants are not precluded from adopting procedures that affect payphone subscribers' [\*32] PIC changes, as long as these procedures are consistent with the Commission's PIC-change rules and orders.

29. Further, we are not persuaded by RCI's unsubstantiated allegation that independent contact by Bell Atlantic and NYNEX may cause some payphone subscribers to rescind their PIC selection. RCI's concern does not present a cognizable violation of the Act. RCI has failed to present evidence or claim that payphone subscribers have in fact rescinded their selection of RCI based on independent contacts from either of the defendants. Moreover, based on the record before us, it appears that the defendant LECs' contact with payphone customers (whether through independent verification or Bell Atlantic's three-way call option) is consistent with the type of interaction contemplated by the four verification methods adopted by the Commission in the PIC [\*8104] Change Order. All of the Commission's verification methods, adopted because they struck an appropriate balance between the legitimate interests of customers and IXC's, involve subsequent contact with the customer (by the IXC or an independent third party) to confirm the customer's PIC-change request after the IXC's initial marketing contact. [\*33] n67 The procedures at issue here appear no more intrusive than the verification methods prescribed by the Commission. In light of the above, we find that RCI has failed to present facts to support a finding that the defendants' practice of independently contacting customers is unlawful within the contemplation of Section 201(b).

n67 PIC Change Order, 7 FCC Rcd at 1045.

30. With regard to RCI's remaining claims, we do not find defendants' decision to switch from automated to manual procedures for payphone PIC changes in the face of persistent slamming problems to be unjust and unreasonable within the meaning of Section 201(b). In reaching our conclusion, we first examine whether RCI has produced evidence to support its assertion that the manual processing of PIC-change orders will delay the provisioning of service to payphone subscribers who select RCI as their preferred carrier, and in turn lead to lost revenues for RCI. Based on the record before us, we find that RCI has failed to provide any information or evidence to demonstrate that the defendants' procedures delayed the provisioning of service to payphone subscribers.

31. Second, we find it significant that RCI has presented [\*34] no evidence to establish that the defendants' procedures resulted in any economic harm to RCI. While RCI argues that the defendants' procedures "may" result in RCI losing some revenues because of possible delay in effecting payphone PIC changes, it has failed to provide the Commission with any specific information or other evidence that might establish the precise effects of the defendants' procedures on RCI's business and operations. For example, RCI has not produced any evidence concerning whether and to what extent the defendants' procedures have affected RCI's ability to provide service to payphone subscribers.

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32. Finally, even assuming that the defendants' procedures resulted in some delay in the provisioning of service to payphone subscribers, we find that the consumer protection benefits obtained as a result of defendants' procedures outweigh any potential harm that could be attributed to such delay. It is undisputed that slamming is prevalent in the payphone presubscription arena, n68 and we find that the defendants' adoption of manual procedures is a reasonable approach to ensuring that payphone subscribers have in fact chosen the IXCs submitting their PIC-change orders. [\*\*35] The Commission has long recognized a carrier's business needs as a relevant factor in determining reasonableness under Section 201(b). n69 Slamming is a [\*8105] pervasive consumer problem that threatens to undermine the Commission's goal of fostering competition in telecommunications markets while protecting consumers from unfair or abusive practices by carriers. Apart from its obvious impact on consumers, slamming imposes a substantial burden on carriers, as well as the Commission, to process and resolve consumer complaints to ensure that consumers obtain the services of their carriers of choice. n70 We are not persuaded by RCI that the PIC-change processes at issue here constitute more than reasonable responses by the defendants to the pervasive slamming problem. For all these reasons, we do not find that the defendants' processing procedures are unjust and unreasonable within the contemplation of Section 201(b).

n68 Bell Atlantic Motion to Dismiss at 4-5; RCI Response to Bell Atlantic Motion to Dismiss at 1, 8.

n69 See RCA Communications, Inc., Memorandum Opinion and Order, 86 FCC 2d 165, 173 (1981) (RCA Communications).

n70 See, e.g., Cherry Consent Decree, 9 FCC Rcd at 2086; Operator Communications, Inc. d/b/a Oncor Communications, Inc., Notice of Apparent Liability, 10 FCC Rcd 5647 (1995); Operator Communications, Inc., Order, 11 FCC Rcd 4861 (1995). [\*\*36]

33. We emphasize that although we find that the defendants' procedures are not unlawful under Section 201(b) of the Act, we are not prescribing these procedures on an industry-wide basis. Our conclusion regarding the lawfulness of NYNEX's and Bell Atlantic's procedures applies only to the particular complaint before us. Nor, as stated above, should our conclusion here be construed to prejudge the outcome of any pending or future rulemaking proceedings in which the Commission may prescribe specific PIC-change-verification or processing procedures to be followed by LECs.

#### C. Section 202(a)

##### 1. Contentions of the Parties

34. Section 202(a) of the Act prohibits "any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services" for "like" communications services of a regulated common carrier; and prohibits a common carrier from exercising any "undue or unreasonable prejudice or disadvantage" against any person or class of persons. n71

n71 47 U.S.C. @ 202(a).

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35. RCI makes two principal arguments to support its claim that the defendants' PIC-change procedures violate Section 202(a) of the Act. RCI first claims that the [\*\*37] additional PIC-change procedures for payphone services unfairly penalize IXCs that have not violated the Commission's rules. n72 RCI next asserts that the defendants' PIC-change procedures treat payphone subscribers differently from other end users, even though payphone subscribers are similarly situated "in all relevant respects" to business and residential subscribers. n73 RCI contends that the disparate treatment associated with the additional PIC-change procedures subjects [\*\*8106] payphone subscribers to service delays and interferes with subscribers' ability to change their PIC selections without the intervention of a LEC, in this case Bell Atlantic or NYNEX. n74

n72 RCI Response to Bell Atlantic Motion to Dismiss at 8.

n73 Id. at 10.

n74 Id.

36. Both Bell Atlantic and NYNEX dispute RCI's Section 202(a) claims. Bell Atlantic maintains that its manual processing procedures for payphone PIC-change requests are not unreasonably discriminatory because they apply to all IXCs that submit payphone PIC-change requests. n75 Bell Atlantic further asserts that any difference in the treatment of payphone subscribers relative to residential or business end users is justified by unique [\*\*38] slamming practices experienced by payphone customers and by the fact that business and residential services are "not like" payphone services within the meaning of Section 202(a). n76 Bell Atlantic states that in its experience with payphone services and in its review of numerous complaints about unauthorized payphone PIC changes, most PIC-change requests submitted electronically by IXCs have been unauthorized. n77 Bell Atlantic maintains that its manual procedures for payphone PIC changes are necessary to control what it describes as more "flagrant" forms of slamming. n78 Bell Atlantic adds that by participating in three-way calls or performing independent verification of payphone PIC-change orders, it ensures that customers have actually chosen the IXC submitting the PIC-change request. n79

n75 Bell Atlantic Motion to Dismiss at 6.

n76 Id.

n77 Id. at 4 n.7.

n78 Id. at 5.

n79 Id.

## 2. Discussion

37. In a Section 208 complaint proceeding, the complainant bears the burden of proof. n80 A complainant alleging that a carrier has engaged in unlawful discrimination within the meaning of Section 202(a) of the Act must make a prima facie showing that the carrier [\*\*39] has discriminated in connection with a "like communication" service or has given an "advantage or preference" to a person or group of persons in connection with such service. n81 Once a

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[\*8107] complainant has established that a carrier has "discriminated" or given an "advantage or preference" as described in Section 202(a), the burden shifts to the carrier to show that the discrimination or preference is justified and, therefore, reasonable. n82 The Commission and the courts have recognized that sufficiency in a given instance of any proffered justification is, by nature, a fact-intensive inquiry. n83 As discussed below, we conclude that RCI has failed to present a prima facie case that the defendants' payphone PIC-change procedures discriminate against certain IXCs within the meaning of Section 202(a) of the Act. With respect to RCI's contention that the disputed procedures have a disparate impact on payphone subscribers, we do not find the procedures unreasonably discriminatory under Section 202(a).

n80 See, e.g., Amendment of Rules concerning Procedures to be Followed When Formal Complaints are Filed Against Common Carriers, 8 FCC Rcd 2614, 2616-17 (1993); Connecticut Office of Consumer Counsel v. AT&T Communications, 4 FCC Rcd 8130, 8133 (1989), aff'd sub nom. Connecticut Office of Consumer Counsel v. FCC, 915 F.2d 75 (D.C. Cir. 1990), cert. denied, 1111 S. Ct. 1310 (1991). See generally 47 C.F.R. §§ 1.720-1.735. [\*\*40]

n81 See MCI Telecommunications Corp. v. FCC, 917 F.2d 30, 39 (D.C. Cir. 1990); see also Interexchange Competition Order, 6 FCC Rcd at 5903 (1991).

n82 Id.

n83 Interexchange Competition Order, 6 FCC Rcd at 5903, citing, e.g., L.T. Barringer & Co. v. United States, 319 U.S. 1, 6-7 (1943); Texas & Pacific Railway v. ICC, 162 U.S. 197, 233-34 (1896).

38. RCI's argument that the defendants' payphone PIC-change procedures discriminate against IXCs that do not violate the Commission's PIC-change rules and orders fails to state a cognizable claim under Section 202(a). RCI does not dispute the defendants' claim that they apply the same procedures to all IXCs that submit payphone PIC-change requests. Indeed, RCI's suggestion that the defendants' payphone PIC-change procedures should be tailored to single out offending IXCs would, if adopted by the defendants, raise the specter of unlawful discrimination within the meaning of Section 202(a).

39. With regard to RCI's second claim, we cannot conclude on the limited record before us that the defendants' PIC-change procedures discriminate unreasonably against payphone subscribers. We note that while Bell Atlantic asserts that payphone [\*\*41] services are not "like" business or residential services for purposes of Section 202(a), neither RCI nor the defendants provide specific evidence or arguments that would support a "like services" analysis under Section 202(a). n84 Even assuming, arguendo, that payphone services are "like" residential and business services within the meaning of Section 202(a), we do not find, on the limited record before us, that the procedures applied by defendants to payphone PIC-change orders are unreasonably discriminatory. The defendants have made a persuasive showing that the slamming practices experienced by payphone subscribers are widespread among IXCs and have generated numerous consumer complaints. n85 RCI, on the other hand, has not produced evidence to show that the additional safeguards used by the defendants to counter payphone slamming have the effect of delaying service to payphone subscribers. Nor has it produced evidence to show that [\*8108] the procedures otherwise unreasonably burden or impact payphone subscribers. The

defendants have represented that their payphone PIC-change processing procedures have been effective in curbing instances of payphone slamming. n86 Under these circumstances, [\*\*42] in the absence of evidence that payphone subscribers are experiencing service delays or other problems not experienced by residential or business subscribers as a result of the defendants' procedures, we find that the defendants' use of their respective payphone PIC-change procedures does not constitute unreasonable discrimination within the meaning of Section 202(a).

n84 As discussed above, a complainant is charged with the burden of proving an alleged violation of the Act or the Commission's rules or orders and must submit sufficient information and arguments to support its claims. See supra para. 37.

n85 See, e.g., MCI Telecommunications Corporation, Notice of Apparent Liability for Forfeiture, 11 FCC Rcd 1821 (Com.Car.Bur. 1996); Excel Telecommunications, Inc., Notice of Forfeiture, DA 96-1009 (June 21, 1996); Heartline Communications, Inc., Notice of Apparent Liability for Forfeiture, FCC 96-272 (June 20, 1996).

n86 See NYNEX Ex Parte Letter.

#### D. Section 203

##### 1. Contentions of the Parties

40. RCI argues that the defendants violated Section 203(b)(1) of the Act n87 by failing to revise their interstate tariffs to reflect their PIC-change processing procedures [\*\*43] prior to implementing those changes. RCI maintains that even though Bell Atlantic and NYNEX's new procedures may not affect its tariffed charges, Section 203(b)(1) requires common carriers to file tariff revisions to reflect "classifications, regulations, and practices" governing their payphone presubscription services. n88

n87 Section 203(b)(1) states that "no change shall be made in the charges, classifications, regulations, or practices which have been so filed and published except after one hundred and twenty days notice to the Commission and to the public, which shall be published in such form and contain such information as the Commission may by regulations prescribe." 47 U.S.C. @ 203(b)(1).

n88 RCI Complaint at 8; RCI Response to Bell Atlantic Motion to Dismiss at 3-5. RCI points to language in the Commission's expanded interconnection orders as support for its argument that Section 203(b)(1) requires common carriers to file tariff revisions governing changes not only to the rates for their services, but also the "classifications, regulations, and practices" governing those services. RCI Response to Bell Atlantic Motion to Dismiss at 3-4.

41. In reply, NYNEX and Bell [\*\*44] Atlantic deny RCI's arguments. Bell Atlantic asserts that its new procedure is consistent with its interstate tariff, which does not specify the procedures by which payphone presubscription is accomplished. n89 Bell Atlantic contends that because it has not changed any term or condition of service set out in its tariff, it is not required to file tariff revisions. n90 Moreover, Bell Atlantic argues, it is not required to tariff its new processing procedure because Section 203(a) requires carriers

to include in their tariffs only those [\*8109] classifications, practices, and regulations "affecting" their tariffed charges. n91 Bell Atlantic avers that since its payphone presubscription procedures do not affect the charges IXCs pay for those services, such procedures need not be tariffed. n92

n89 Bell Atlantic Motion to Dismiss at 3.

n90 Id.

n91 Section 203(a) provides in pertinent part that every common carrier must file a tariff for "all charges" with the Commission that shows "the classifications, practices, and regulations affecting such charges." 47 U.S.C. @ 203(a).

n92 Bell Atlantic Motion to Dismiss at 3 n.2.

## 2. Discussion

42. At the outset, we note that there [\*45] is no requirement in any of the Commission's PIC-change rules or orders that LECs specify in their interstate tariffs the procedures by which payphone presubscription is to be accomplished. Hence, defendants were not compelled by the Commission's rules or orders to file tariff revisions to reflect their new processing procedures. Nevertheless, we must consider whether, as RCI argues, Section 203(b)(1) of the Act required the defendants to file tariff revisions in this instance.

43. We disagree with RCI's contention that Section 203(b)(1) requires the defendants to file tariff revisions to reflect "classifications, regulations, and practices" governing their payphone presubscription procedures. Indeed, that section of the Act merely precludes carriers from changing filed and published charges, classifications, regulations, or practices except after 120 days' notice to the Commission and to the public. RCI's reliance on Section 203(b)(1) is, therefore, misplaced.

44. To the extent that RCI intended to invoke Section 203(a) of the Act, which provides in pertinent part that every common carrier must file a tariff for "all charges" with the Commission that shows "the classifications, [\*46] practices, and regulations affecting such charges," we conclude that such claim is also unavailing. In the Spanish International Order, n93 the Commission held that Section 203(a) of the Act requires a carrier to include in its tariff only those classifications, practices, and regulations "affecting" its tariffed charges. n94 The Spanish International Order addressed, inter alia, whether RCA Americom was required to include in its tariff its practices for filling orders for service. The Commission concluded that because RCA Americom's practices did not affect its charges for service, RCA Americom was not required to tariff the subject procedures under Section 203(a). n95 The Commission reached the same conclusion with respect to procedures for allocating facilities in RCA Communications. n96 In the [\*8110] present case, the defendants' procedures for processing IXCs' PIC-change orders are clearly in the nature of the practices and procedures that the Commission has held do not constitute classifications, practices, and regulations affecting a carrier's tariffed charges. As such, the defendants were not required to file tariff revisions before implementing their procedures for processing payphone [\*47] PIC changes. Finally, we are not persuaded by RCI's argument that the Commission's

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expanded interconnection orders support requiring the defendants to file tariff revisions to reflect their new PIC-change processing procedures. The tariffing standards for a Commission-mandated service like expanded interconnection have no relevance to payphone presubscription procedures.

n93 Spanish International Network, et. al, 78 FCC 2d 1451, 1472 (1980)  
(Spanish International Order).

n94 Id. at 1470-71.

n95 Id.

n96 RCA Communications, 86 FCC 2d at 176.

#### IV. CONCLUSION AND ORDERING CLAUSES

45. We have reviewed the evidence and arguments submitted by the parties. For the reasons stated above, we find that RCI has failed to support its claims that the defendants' procedures for processing PIC-change orders for their public payphones violated either the Commission's PIC-change rules and orders or the Communications Act of 1934, as amended.

46. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 208, and authority delegated by Section 0.291 of the Commission's Rules, 47 C.F.R. [\*\*48] @ 0.291, that the above-captioned complaint filed by RCI Long Distance, Inc. IS DENIED.

47. IT IS FURTHER ORDERED that the Motion to Dismiss filed by Bell Atlantic IS DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Regina M. Keeney

Chief, Common Carrier Bureau



11 FCC Rcd 17312 printed in FULL format.

In the Matter of AT&T CORP.

File No. ENF-96-06; NAL Acct. No. 616EF006

FEDERAL COMMUNICATIONS COMMISSION

11 FCC Rcd 17312; 1996 FCC LEXIS 6854

RELEASE-NUMBER: DA 96-2072

December 11, 1996 Released; Adopted November 27, 1996

ACTION:    [\*\*1]    ORDER

JUDGES:

By the Chief, Common Carrier Bureau:

OPINIONBY: KEENEY

OPINION:

[\*17312] 1. In December 1995, the Enforcement Division of the Common Carrier Bureau (the "Bureau") initiated an investigation of AT&T Corp. ("AT&T"), concerning possible violations of the Commission's policies and rules concerning primary interexchange carrier ("PIC") conversions. n1

n1 See 47 C.F.R. §§ 64.1100, 64.1150; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, 10 FCC Rcd 9560 (1995), recon. pending; Policies and Rules Concerning Long Distance Carriers, 7 FCC Rcd 1038 (1992), recon. denied, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, 101 FCC 2d 911 (1985), recon. denied, 102 FCC 2d 503 (1985); Investigation of Access and Divestiture Related Tariffs, Phase I, 101 FCC 2d 935 (1985).

2. On January 23, 1996, the Bureau issued to AT&T a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of forty thousand dollars (\$40,000) based on the Bureau's preliminary determination that AT&T had apparently willfully violated the Commission's PIC change rules and orders. n2

n2 AT&T Corp., Notice of Apparent Liability, 11 FCC Rcd 1885 (Com. Car. Bur. 1996).    [\*\*2]

3. The Bureau and AT&T, by and through their respective counsel, entered into consent negotiations concerning AT&T's alleged violations and have reached an agreement that terminates the investigation. The terms and conditions of the agreement are set forth in the attached Consent Decree and such terms and conditions are incorporated herein by reference.

4. We have carefully evaluated the circumstances of this matter and find that approval of the attached Consent Decree is in the public interest.

5. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act, 47 U.S.C. § 154(i), and the authority delegated in Section 0.291 of the Commission's rules,    [\*17313] 47 C.F.R. § 0.291, that the attached Consent Decree is hereby ADOPTED and that the above-captioned proceeding is thereby terminated.

FEDERAL COMMUNICATIONS COMMISSION

Regina M. Keeney

Chief, Common Carrier Bureau

CONSENT DECREE

1. The Common Carrier Bureau ("Bureau") of the Federal Communications Commission ("FCC" or "Commission") and AT&T Corp. ("AT&T"), by their attorneys or authorized representatives, hereby enter into a Consent Decree terminating an FCC investigation concerning AT&T's alleged violation of [\*\*3] the Commission's policies and rules regarding primary interexchange carrier ("PIC") conversions. n1 AT&T is a common carrier that provides interstate interexchange telecommunications services pursuant to tariffs on file with the Commission.

n1 47 C.F.R. @ 64.100; Policies and Rules Concerning Changing Long Distance Carriers, 7 FCC Rcd 1038 (1992), recon. denied, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, 101 FCC 2d 911 (1985), recon. denied 102 FCC 2d 503 (1985); Investigation of Access and Divestiture Related Tariffs, 101 FCC 2d 935 (1985).

2. On January 23, 1996, the Bureau issued to AT&T a Notice of Apparent Liability for Forfeiture ("NAL"). n2 The Bureau preliminarily determined that AT&T had apparently violated Commission rules and orders by changing the PIC designated by Jean Flores ("Flores") of Brooklyn, New York, without Flores' authorization. After reviewing the facts and circumstances surrounding the alleged violation, the Bureau found AT&T apparently liable for a forfeiture in the amount of forty thousand dollars (\$ 40,000). The Bureau and AT&T thereafter entered into consent negotiations and have agreed to terminate this proceeding [\*\*4] pursuant to the terms and conditions set forth herein.

n2 AT&T Corporation, Notice of Apparent Liability for Forfeiture, 11 FCC Rcd 1885 (Com. Car. Bur. 1996) ("NAL").

3. For the purposes of this Consent Decree the following definitions shall apply:

- a. "Commission" or "FCC" means the Federal Communications Commission;
- b. "Bureau" means the Common Carrier Bureau of the Federal Communications Commission;
- c. "AT&T" means AT&T Corp., its successors and assigns;
- d. "Parties" means AT&T and the Bureau;
- e. "Adopting Order" means an Order of the Bureau adopting the terms and conditions of this Consent Decree;
- f. "PIC Change" is an order or request transmitted by an interexchange carrier to a local exchange carrier ("LEC") requesting a change of a customer's primary interexchange carrier ("PIC");
- g. "Letter of Agency" or "LOA" means a written authorization signed by the

customer authorizing a PIC change;

h. "Informal Complaint" or "Consumer Complaint" means a complaint filed with the Consumer Protection Branch of the Common Carrier Bureau's Enforcement Division under 47 C.F.R. @ 1.716.

4. The Parties agree that the provisions of this Consent Decree shall [\*\*5] be subject to final approval by the Bureau by incorporation of such provisions by reference in an Adopting Order of the Bureau, and that adoption of such Order by the Bureau shall terminate the captioned proceeding.

5. The Parties agree that this Consent Decree shall become effective the date on which the Adopting Order is released by the Common Carrier Bureau. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission and any violation of the terms of this Consent Decree shall constitute a violation of a Commission Order entitling the Commission to exercise any and all rights and to seek any and all remedies authorized by law for the enforcement of a Commission Order.

6. AT&T admits that the Commission has jurisdiction over it and the subject matter of this action.

7. AT&T agrees to waive any further procedural steps and any rights it may have to seek judicial review or otherwise challenge or contest the validity of the Adopting Order or this Consent Decree.

8. AT&T agrees to waive any rights it may have under any provision of the Equal Access to Justice Act, 5 U.S.C. @ 504.

9. The Parties agree and acknowledge [\*\*6] that this Consent Decree shall constitute a final settlement between AT&T and the Commission of the above-captioned NAL proceeding but agree that this Consent Decree is not dispositive of the rights of any complainant who has filed an informal complaint against AT&T and does not resolve those complaints or any matter(s) within the jurisdiction of any other federal agency.

10. The Parties agree that this Consent Decree is for settlement purposes and that AT&T does not admit any alleged violation or liability for the specific acts described in the NAL or in any informal complaints received by the Commission on or before the effective date of this Consent Decree. Indeed, AT&T expressly denies any such violation or liability.

11. AT&T shall make a voluntary contribution to the United States Treasury in the total amount of \$ 30,000 (thirty thousand dollars) for the alleged unauthorized conversion within 30 days of the effective date of this Consent Decree. Such contribution shall be made, without further protest or recourse, by certified check, cashier's check, or money order drawn to the order of the Federal Communications Commission, shall reflect "FCC File No. ENF-96-06, NAL/Acct. [\*\*7] No. 616EF006," and shall be mailed to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

12. AT&T agrees that it shall not submit to any LEC any PIC-change request unless AT&T has complied with all Commission rules and orders, in effect, or as they may be hereafter modified or amended, concerning PIC changes.

13. AT&T agrees that it will review its policies and procedures pertaining to Face-to-Face marketing, including all slamming and contest guidelines on a monthly basis for contracted temporary personnel and on a quarterly basis for AT&T sales management.

14. AT&T agrees that, in Face-to-Face marketing, all customer names and signatures will be verified at the point of sale through customer provided identification to ensure the name of the individual authorizing carrier selection on the letter of agency (LOA) matches the identification provided. Where such identification is not available from the customer, the customer will be recontacted by telephone to confirm the order prior to processing a PIC change.

15. AT&T agrees that contracted temporary personnel who interface directly with customers [\*\*8] will be paid on an hourly basis instead of a volume-driven compensation plan. LOAs will be coded so customer dissatisfaction can be traced directly to the staffer who handled the transaction and corrective action can be enforced in a timely manner.

16. AT&T agrees that within thirty (30) days of the effective date of this Consent Decree, AT&T will contact 500 customers each month regarding their overall experience with AT&T's Face-to-Face marketing. The LOA will be retrieved and the sale investigated of any customer stating they did not order or authorize AT&T long distance service. An additional random three percent (3%) sample n3 of customers who switch to AT&T as a result of Face-to-Face marketing efforts will be called each month to verify that the order matches the customer's expectations. In addition, AT&T will engage an independent marketing research firm as "mystery shoppers" to pose as potential customers in approximately 2,000 Face-to-Face presubscription marketing transactions each year, to evaluate adherence to all required procedures. All deviations from required procedures identified through the "Mystery Shopper" program will be investigated by AT&T and corrective action [\*\*9] will be taken to address any problems disclosed by such investigation.

n3 According to AT&T's data from January 1996, this sample size would have amounted to approximately six thousand (6,000) customers. To the extent the three percent (3%) sample size becomes statistically invalid to achieve a ninety-five percent (95%) Confidence Interval, AT&T will adjust the sample size accordingly.

17. AT&T agrees that six (6) months after the effective date of this Consent Decree, and every six (6) months thereafter for two (2) years, AT&T agrees to submit a report to the Bureau on the effectiveness of its mandatory verification program in reducing incidents of unauthorized conversion of consumers' primary interexchange carriers. The report will include, but is not limited to, the percentage of PIC changes disputed by the consumer, classification of the basis for the disputes, and classification of the dispute resolution, as well as a comparison of the percentage of PIC-change disputes under the three percent (3%) verification program with the percentage of PIC-change disputes generated before the verification program was initiated. AT&T reserves the right to claim that such records are [\*\*10] non-releasable proprietary information under the Freedom of Information Act, 5 U.S.C. @ 522(b) and the Trade Secrets Act, 18 U.S.C. @ 1905. The Bureau agrees to allow AT&T an opportunity to establish such claims in accordance with the Commission's rules at 47 C.F.R. @@ 0.457, 0.459.

18. AT&T agrees that within thirty (30) days of the effective date of this Consent Decree, AT&T will send a written advisory to all companies currently under contract to act as sales distributors of AT&T consumer services instructing them that it is impermissible for sales representatives to sign a LOA on a customer's behalf and that the signature on the LOA must be that of the party authorized to make the PIC change. The advisory will include a copy of the Commission's Letter of Agency Form and Content provisions, 47 C.F.R. @ 64.1150. A copy of the written advisory will be submitted to the Bureau's Enforcement Division within ten (10) days of its distribution. AT&T will further require the recipients of such advisories to acknowledge in writing within fourteen (14) days their receipt and understanding of the advisory and the FCC provisions included.

19. AT&T agrees that within ninety (90) days of the [\*\*11] effective date of this Consent Decree, AT&T will supplement its sales manuals as required to make clear that no sales representative may sign a LOA on a customer's behalf and that the signature on the LOA must be that of the party authorized to make the PIC change. Copies of the supplement to the sales manuals will be submitted to the Bureau's Enforcement Division within ten (10) days of completion.

20. For two (2) years beginning on the effective date of this Consent Decree, AT&T agrees to maintain and make available to the Bureau, within fourteen (14) days of the receipt of a written request from the Bureau, business records demonstrating compliance with the terms and provisions of this Consent Decree, including, but not limited to, advertisements, sales scripts, manuals or presentations, written advisories to sales distributors and agents and required responses to those advisories, Letters of Agency, PIC-change records, the data used as a basis for the reports to be submitted under paragraph 17, billing records, and all consumer complaints including those filed directly with AT&T and those filed against AT&T in any local, state, or federal jurisdiction served or otherwise submitted [\*\*12] to AT&T. The record of consumer complaints shall include the name, address and telephone number of each complainant, AT&T's response, and the final disposition of each complaint. The Bureau will entertain any request made by AT&T for an extension of time in which to comply with the Bureau's written request described herein.

21. AT&T represents that it has satisfied the complaint filed with the Commission by Jean Flores that gave rise to the Bureau's NAL. See AT&T Corporation, Response to Notice of Apparent Liability for Forfeiture, File No. ENF-96-06, NAL/Acct. No. 616EF006, dated February 22, 1996.

22. In light of the covenants and representations contained in this Consent Decree, and in express reliance thereon, the Bureau agrees that adoption of this Consent Decree shall serve to resolve all allegations that are the subject of the NAL issued in the above-captioned proceeding without any finding of liability on the part of AT&T. The Bureau further agrees that in the absence of substantial additional and material facts, the Bureau shall not on its own motion institute against AT&T new proceedings of any kind arising out of the PIC change submitted on behalf of Jean Flores.

23. [\*\*13] The Bureau further agrees that in the absence of substantial additional and material facts, it shall not on its own motion institute forfeiture proceedings against AT&T based on residential and small business customers' informal complaints of unauthorized LOA-generated PIC changes occurring before August 1, 1996. Consumer complaints generated during this

time period will be served on AT&T under the procedures and rules governing such complaints and AT&T agrees to resolve these complaints to the extent required by the Communications Act and the Commission's rules and regulations. Except to the extent agreed herein, nothing in this Consent Decree shall prevent the Commission from adjudicating future complaints filed against AT&T, or from instituting a new investigation or enforcement proceedings against AT&T in the event of future misconduct.

24. The Parties agree that any provision of the Consent Decree, affected by or inconsistent with any subsequent rule or order adopted by the Commission, will be superseded by such Commission rule or order.

FOR THE COMMON CARRIER BUREAU OF THE FEDERAL COMMUNICATIONS COMMISSION

/s/ John B. Muleta  
Chief, Enforcement Division

Date 11/7/96 [\*\*14]

FOR AT&T CORP.

/s/ E.E. Estey

Government Affairs Vice President

Date 11/7/96



2ND ITEM of Level 1 printed in FULL format.

In the Matter of MCI Telecommunications Corporation Apparent  
Liability for Forfeiture

File No. ENF-96-01; NAL/Acct. No. 616EF001

FEDERAL COMMUNICATIONS COMMISSION

11 FCC Rcd 1821; 1996 FCC LEXIS 242

RELEASE-NUMBER: DA 96-44

January 23, 1996 Released; Adopted January 19, 1996

ACTION:    [\*\*1]    NOTICE OF APPARENT LIABILITY FOR  
FORFEITURE

JUDGES:

By the Chief, Common Carrier Bureau

OPINIONBY: KEENEY

OPINION:

[\*1821]    I. INTRODUCTION

1. By this Notice of Apparent Liability for Forfeiture ("NAL"), we initiate enforcement action against MCI Telecommunications Corporation ("MCI"). n1 For the reasons discussed below, we find that MCI apparently willfully or repeatedly violated Commission rules and orders n2 by changing the primary interexchange carrier ("PIC") designated by Sandy Russo ("Russo") of Los Angeles, California, and Casimiro and Connie C. Gonzales ("the Gonzaleses") of Sylmar, California, without Russo's or the Gonzaleses' authorization. Based upon our review of the facts and circumstances surrounding the violations, we find that MCI is apparently liable for a forfeiture in the amount of eighty thousand dollars (\$80,000).

n1 MCI Telecommunications Corporation is a Delaware corporation with headquarters located at 1801 Pennsylvania Avenue, N.W., Washington, D.C.

n2 47 C.F.R. @ 64.1100; Investigation of Access and Divestiture Related Tariffs, CC Docket 83-1145, Phase 1, 101 FCC 2d 911 (1985) (Allocation Order); recon. denied, 102 FCC 2d 503 (1985) (Reconsideration Order); Investigation of Access and Divestiture Related Tariffs, CC Docket 83-1145, Phase 1, 101 FCC 2d 935 (1985) (Waiver Order).    [\*\*2]

II. THE COMMISSION'S PIC CHANGE RULES AND ORDERS

2. In its Allocation Order and subsequent Reconsideration Order and Waiver Order, n3 the Commission set forth rules and procedures for implementing equal access n4 and customer presubscription n5 to an interexchange carrier ("IXC"). n6 The Commission's original allocation plan required IXCs to have on file a letter of agency ("LOA") signed by the customer before submitting PIC change orders to the local exchange carrier ("LEC") on behalf of the customer. n7 After considering claims by certain IXCs that this requirement would stifle competition because consumers would not be inclined to execute the LOAs even though they agreed to change their PIC, the Commission modified the

11 FCC Rcd 1821, \*1821; 1996 FCC LEXIS 242, \*\*2

requirement to allow IXCs to initiate PIC changes if they had "instituted steps to obtain signed LOAs." n8 In 1992, the Commission again revised its rules because it continued to receive complaints about unauthorized PIC changes. n9 Specifically, while the Commission recognized the benefits of permitting a telephone-based industry to rely on telemarketing to solicit new business, it required IXCs to institute one of the following four confirmation procedures [\*\*3] before submitting PIC change orders generated by telemarketing: (1) obtain the consumer's written authorization; (2) obtain the consumer's electronic authorization by use of an 800 number; (3) have the consumer's oral authorization verified by an independent third party; or (4) send an information package, including a prepaid, return postcard, within three days of the consumer's request for a PIC change, and wait 14 days before submitting the consumer's order to the LEC, so that the consumer has sufficient time to return the postcard denying, cancelling or confirming the change order. n10 Hence, the Commission's rules and orders require that IXCs either obtain a signed LOA or, in the case of telemarketing solicitations, complete one of the four telemarketing verification procedures before submitting PIC change requests to LECs on behalf of consumers.

n3 See supra proceedings cited at note 2.

n4 Equal access for interexchange carriers ("IXCs") is that which is equal in type, quality and price to the access to local exchange facilities provided to AT&T and its affiliates. United States v. American Tel. & Tel., 552 F. Supp. 131, 227 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983) (Modification of Final Judgement or "MFJ"). "Equal access allows end users to access facilities of a designated [IXC] by dialing '1' only." Allocation Order, 101 FCC 2d at 911. [\*\*4]

n5 Presubscription is the process by which each customer selects one primary interexchange carrier ("PIC"), from among several available carriers, for the customer's phone line(s). Allocation Order, 101 FCC 2d at 911, 928. Thus, when a customer dials "1," only the customer accesses the primary IXC's services. An end user can also access other IXCs by dialing a five-digit access code (10XXX). Id. at 911.

n6 Pursuant to the MFJ, the Bell Operating Companies (BOCs) were ordered to provide, where technically feasible, equal access to their customers by September 1986. Id.

n7 An LOA is a document, signed by the customer, which states that the customer has selected a particular carrier as that customer's primary long distance carrier. Allocation Order, 101 FCC 2d at 929.

n8 Waiver Order, 101 FCC 2d at 942.

n9 Policies and Rules Concerning Changing Long Distance Carriers, 7 FCC Rcd 1038-39 (1992) (PIC Change Order).

n10 See 47 C.F.R. @ 64.1100; PIC Change Order, 7 FCC Rcd at 1045.

3. Because of its continued concern over unauthorized PIC changes, the Commission recently prescribed the general form and content of the LOA used to authorize a change [\*\*5] in a customer's primary long distance carrier. n11 The Commission's recent rules prohibit the potentially deceptive or confusing

11 FCC Rcd 1821, \*1821; 1996 FCC LEXIS 242, \*\*5

practice of combining the LOA with promotional materials in the same document. n12 The rules also prescribe the minimum information required to be included in the LOA and require that the LOA be written [\*1822] in clear and unambiguous language. n13 The rules prohibit all "negative option" LOAs n14 and require that LOAs and any accompanying promotional materials contain complete translations if they employ more than one language. n15

n11 Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, 10 FCC Rcd 9560 (1995).

n12 See id. at 9574-75. Checks that serve as an LOA are excepted from the "separate or severable" requirement so long as the check contains certain information clearly indicating that endorsement of the check authorizes a PIC change and otherwise complies with the Commission's LOA requirements. Id. at 9573.

n13 See id. at 9564-65.

n14 See id. at 9565-66. "Negative option" LOAs require consumers to take some action to avoid having their long distance telephone service changed.

n15 See id. at 9581. [\*\*6]

### III. THE RUSSO AND GONZALES COMPLAINTS

#### A. The Russo Complaint

4. On August 10, 1995, the Commission received a written complaint from Russo alleging that MCI had converted her presubscribed long distance service provider from AT&T Corporation ("AT&T") to MCI without her authorization. n16 Russo states that after she received a card in Spanish from MCI, she had it translated and discovered that it thanked her for picking MCI as her long distance carrier. Russo then contacted her local telephone company, Pacific Bell, who confirmed that her long distance carrier had been changed to MCI. n17 In investigating the reason her long distance carrier was switched, Russo was apparently directed to Amway Corporation ("Amway"), a marketing agent for MCI, and received from the Amway/MCI Service Department a faxed copy of a LOA purporting to bear her signature. Russo states that the signature on the LOA is not hers and that the signature does not reflect the correct spelling of her name. Russo further points out that the LOA purportedly bearing her signature is written entirely in Spanish, a language she does not speak, read, or write. Russo attached to her complaint a chronology of her [\*\*7] dispute with MCI, a copy of the LOA she received from Amway, and samples of her handwriting offered as evidence that the signature on the LOA is not hers. n18

n16 Sandy D. Russo, Informal Complaint No. IC-95-22370 (August 10, 1995).

n17 Id.

n18 Id.

5. On December 1, 1995, the Common Carrier Bureau's Consumer Protection Branch n19 directed MCI to provide specific information regarding the conversion of Russo's telephone service. n20 In its response, MCI states that Russo's service was changed to MCI on the basis of a LOA submitted by Amway. n21 MCI

11 FCC Rcd 1821, \*1822; 1996 FCC LEXIS 242, \*\*7

does not deny that Russo's signature on the LOA is a forgery and offers no explanation for how it was obtained. Rather, MCI states that Amway currently reviews LOAs for completeness and that MCI and Amway will be implementing a more stringent verification process in the future.

n19 Formerly known as the Informal Complaints and Public Inquiries Branch.

n20 Notice of Informal Complaint No. IC-95-22370 (December 1, 1995).

n21 MCI Response to Informal Complaint No. IC-95-22370 (January 18, 1996).

#### B. The Gonzales Complaint

6. On September 6, 1995, the Gonzaleses filed a written complaint with the [\*\*8] Commission alleging that MCI had converted their prescribed long distance service provider from AT&T to MCI without their authorization. n22 The Gonzaleses state that in August they received a letter, written entirely in Spanish, thanking them for making MCI their long distance carrier. According to the Gonzaleses, neither of them read Spanish. Upon contacting MCI regarding the change in their long distance service, Mrs. Gonzales was told by an MCI representative that the switch was made on the basis of their purchase of an Amway product. The Gonzaleses state, however, that they had not made any Amway purchases. Mrs. Gonzales then contacted Amway, who forwarded to the Gonzaleses a copy of the LOA relied on by MCI as the basis for requesting Pacific Bell to change the Gonzaleses' primary long distance carrier. According to the Gonzaleses, the signature is a forgery and, further, their surname is misspelled. n23 The Gonzaleses submitted a copy of this LOA with their complaint.

n22 Casimiro and Connie C. Gonzales, Informal Complaint No. IC-95-23743 (September 6, 1995).

n23 Id. The signature on the LOA reads "Gonzalez," not "Gonzales," as used by the complainants.

7. On [\*\*9] December 1, 1995, the Common Carrier Bureau's Consumer Protection Branch directed MCI to provide specific information regarding the conversion of the Gonzaleses' telephone service. n24 In its response, MCI states that the Gonzaleses' service was changed to MCI on the basis of a LOA submitted by Amway. n25 MCI does not deny that Mr. Gonzales' signature on the LOA is a forgery and offers no explanation for how it was obtained. Rather, MCI states that Amway currently reviews LOAs for completeness and that MCI and Amway will be implementing a more stringent verification process in the future.

n24 Notice of Informal Complaint No. IC-95-23743 (December 1, 1995).

n25 MCI Response to Informal Complaint No. IC-95-23743 (January 18, 1996).

#### IV. DISCUSSION

8. We have carefully evaluated the information submitted in connection with Russo's and the Gonzaleses' informal complaints and conclude that MCI is apparently liable for forfeiture for willful or repeated violation of the Commission's rules and PIC change requirements. We find MCI's apparent actions particularly egregious. It appears that on or about July 20, 1995, and August

11 FCC Rcd 1821, \*1822; 1996 FCC LEXIS 242, \*\*9

3, 1995, MCI submitted PIC change requests to [\*\*10] GTE California, Inc. ("GTE") and Pacific Bell, both based on apparently forged LOAs. These actions resulted in the unauthorized conversion of Russo's and the Gonzaleses' long distance telephone service from AT&T to MCI. The statements and information provided by Russo and the Gonzaleses leave virtually no doubt that the LOAs were not executed by the complainants and that MCI lacked the requisite authorization to request a PIC change to either Russo or the Gonzaleses' long distance service. With regard to Russo's complaint, her name is misspelled on the LOA form that MCI used as the basis for the PIC change submitted to Pacific Bell and there is no similarity between the signatures provided by Russo and her purported signature on the LOA. n26 With respect to the Gonzaleses' complaint, their name is also misspelled on the LOA that MCI used as the basis for the PIC change submitted to GTE and there is no similarity between the [\*1823] signature on the LOA and that provided by Mr. Gonzales. n27 In addition, the LOA at issue in the Russo complaint was written entirely in Spanish and has a box checked indicating a preference for Spanish. Russo has represented that she does not speak, read, or understand [\*\*11] the Spanish language. The LOA at issue in the Gonzales complaint also has a box checked indicating a preference for Spanish. The Gonzaleses have represented that they do not read the Spanish language. Under these circumstances, we conclude that MCI's apparent actions were in willful or repeated violation of the Commission's PIC change rules and orders and that a substantial forfeiture penalty is appropriate.

n26 See Attachment 1.

n27 See Attachment 2.

9. We also note that with regard to PIC changes, the actions of Amway, MCI's marketing agent, do not relieve MCI of its independent obligation to ensure compliance with our rules, nor do they otherwise mitigate MCI's role in the apparent violations. The Communications Act deems the acts or omissions of an agent or other person acting for a common carrier to be the acts or omissions of the carrier itself. n28 Hence, the Act expressly prohibits a carrier from evading the requirements of the Act or the Commission's rules or orders by hiring someone else who then engages in conduct that contravenes these requirements.

n28 See 47 U.S.C. @ 217.

10. As a general matter, the unauthorized conversion of a customer's presubscribed [\*\*12] long distance carrier continues to be a wide-spread problem in the industry. n29 We are particularly troubled by what appears to be a common practice by some IXCs of relying on unverified LOAs, which turn out to be falsified or forged, to effect changes in consumers' long distance service. The pervasiveness of the problem suggests that our current administration of the law has not produced sufficient deterrence to non-compliance and the carriers have little incentive to curtail practices that lead to consumer complaints. Furthermore, as a practical matter, the carriers' responses to alleged unauthorized conversion complaints rarely provide a detailed explanation or justification of the carrier's actions. Therefore, to draw industry's attention to the seriousness of the problem and to provide incentives to comply with the Commission's rules and orders, we intend to scrutinize consumer complaints and to take prompt enforcement action, including the imposition of substantial monetary fines, when the facts indicate that a carrier has failed to take the necessary steps to ensure that LOAs are valid and duly authorized. If carriers

11 FCC Rcd 1821, \*1823; 1996 FCC LEXIS 242, \*\*12

intend to rely on a LOA to request a PIC change, they will [\*\*13] be responsible for ensuring its validity.

n29 From June 1994 to June 1995, of the 28,773 informal complaints filed, 7,960 were for alleged unauthorized conversions of the customer's presubscribed long distance carrier.

11. Section 503(b)(2)(B) of the Communications Act authorizes the Commission to assess a forfeiture of up to one hundred thousand dollars (\$ 100,000) for each violation, or each day of a continuing violation, up to a statutory maximum of one million dollars (\$ 1,000,000) for a single act or failure to act. n30 In exercising such authority, the Commission is required to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require." n31 For purposes of determining an appropriate forfeiture penalty in this case, we regard the conversion of the Russo and the Gonzaleses' telephone lines as two violations. After weighing the circumstances surrounding each violation, we find that MCI is apparently liable for a forfeiture of forty thousand dollars (\$ 40,000) for the unauthorized conversion of [\*\*14] the Russo line and forty thousand dollars (\$ 40,000) for the conversion of the Gonzaleses line, resulting in a total forfeiture of eighty thousand dollars (\$ 80,000). MCI will have the opportunity to submit evidence and arguments in response to this NAL to show that no forfeiture should be imposed or that some lesser amount should be assessed. n32 In this regard, we note that the Commission has previously held that a licensee's gross revenues are the best indicator of its ability to pay a forfeiture and that use of gross revenues to determine a party's ability to pay is reasonable, appropriate, and a useful yardstick in helping to analyze a company's financial condition for forfeiture purposes. n33 We will give full consideration to any financial information provided by MCI before assessing a final forfeiture amount.

n30 47 U.S.C. @ 503(b)(2)(B).

n31 Id. @ 503(b)(2)(D).

n32 See 47 U.S.C. @ 503(b)(4)(C); 47 C.F.R. @ 1.80(f)(3).

n33 PJB Communications of Virginia, 7 FCC Rcd 2088, 2089 (1992) (finding that forfeitures of \$ 5,000 and \$ 3,000 assessed against two jointly owned and operated paging companies were not excessive because the total forfeiture amount (\$ 8,000) represented approximately 2.02 percent of the companies' combined gross revenues of \$ 395,469); see also David L. Hollingsworth d/b/a Worland Services, 7 FCC Rcd 6640 (Com. Car. Bur. 1992) (\$ 6,000 forfeiture representing approximately 1.21 percent of licensee's 1991 gross revenues and approximately 1.34 percent of projected 1992 gross revenues not found to be excessive); Afton Communications Corp., 7 FCC Rcd 6741 (Com. Car. Bur. 1992) (\$ 6,000 forfeiture representing approximately 3.91 percent of 1990 gross revenues and 2.75 percent of projected 1992 gross revenues not found to be excessive). [\*\*15]

#### V. CONCLUSIONS AND ORDERING CLAUSES

12. We have carefully reviewed the information submitted in connection with Casimiro and Connie C. Gonzales and Sandy Russo's informal complaints and conclude that on or about July 20, 1995, and August 3, 1995, MCI apparently

11 FCC Rcd 1821, \*1823; 1996 FCC LEXIS 242, \*\*15

converted, or caused a local exchange carrier to convert the Gonzaleses' and Russo's telephone lines without either the Gonzaleses' or Russo's authorization through the use of apparently forged LOAs. We further conclude that MCI thereby apparently willfully or repeatedly violated Commission rules governing primary interexchange carrier conversions, and that its conduct warrants a forfeiture in the amount of eighty thousand dollars (\$ 80,000).

13. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of Communications Act of 1934, as amended, 47 U.S.C. @ 503(b), and Section 1.80 of the Commission's rules, 47 C.F.R. @ 1.80, that MCI Telecommunications Corporation IS HEREBY NOTIFIED of an Apparent Liability for Forfeiture in the amount of eighty thousand dollars (\$ 80,000) for its willful or repeated violation of the Commission's PIC change rules and orders, 47 C.F.R. @ 64.1100; PIC Change Order, 7 FCC Rcd 1038 (1992); [\*\*16] Allocation Order, 101 FCC 2d 911 (1985); Waiver Order, 101 FCC 2d 935 (1985).

14. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, 47 C.F.R. @ 1.80, that within thirty days of the release of this Notice, MCI Telecommunications [\*\*1824] Corporation SHALL PAY the full amount of the proposed forfeiture n34 OR SHALL FILE a response showing why the proposed forfeiture should not be imposed or should be reduced.

n34 The forfeiture amount should be paid by check or money order drawn to the order of the Federal Communications Commission. Reference should be made on MCI Telecommunications Corporation's check or money order to "NAL/Acct. No. 616EF001." Such remittances must be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

15. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture SHALL BE SENT by certified mail to Mr. Bert C. Roberts, MCI Telecommunications Corporation, 1801 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

Regina M. Keeney

Chief, Common Carrier Bureau

APPENDIX: ATTACHMENT 1

Saundra Russo, File No. [\*\*17] IC-95-22370

4. Signature: - My normal signature is S. RUSSO or SANDY RUSSO. I only sign my full name on my personal checks or legal documents. My first name is spelled incorrectly.

SAMPLES: S. RUSSO  
SANDY RUSSO  
SAUNDRA RUSSO

Attached is a detailed report of this entire event and copies of all related documents.

11 FCC Rcd 1821, \*1824; 1996 FCC LEXIS 242, \*\*17

I do not normally complain about adverse events in my life; but, this time I extremely dislike being used in this manner. I sincerely feel that MCI could have made one additional phone call to confirm this request and avoided this entire event. Professionally as Office Manager I have found their sales techniques very irritating and now to have to deal with them in my personal affairs was the last straw.

It would be greatly appreciated if you could advise me if I have any recourse available to me. Thank you.

Sincerely,

Ms Sandy Russo

cc: AMWAY CORPORATION

Attn: BUSINESS CONDUCT and RULES

7575 E FULTON RD, 56-3A

ADA, MI 49355-0001

FAX: (616) 787-4529

Carta de Autorizacion

Nombre del distribuidor David Acevedo

Estado

Firma del distribuidor David Acevedo Fecha 07-19-95

Datos del cliente

Apellido Russo Nombre Sandra

Direccion 340 S. Normandie [\*\*18] Ave #207

Ciudad L.A. Estado CA Codigo postal 90020

Numero del telefono que recibira el servicio (213) 388-2328

Numero del Seguro Social - - Fecha de Nacimiento / /

Cantidad de Tarjetas MCI gratis 1

☒ Amigos y Familiares del Mundo SM

Otros servicios

? Que idioma prefiere? ☐ Ingles ☒ Espanol

Selecciono a MCI como mi proveedor principal de servicios de larga distancia, para los numeros de telefono que he indicado. Asimismo, autorizo a MCI (R) a notificar mi seleccion a mi compania de telefonos local.

11 FCC Rcd 1821, \*1824; 1996 FCC LEXIS 242, \*\*18

Entiendo que solo puedo seleccionar una compania de larga distancia por numero de telefono asi como que la compania telefonica local cobra un modico honorario por este cambio, y que MCI me enviara un Certificado por \$ 5.00 a modo de compensacion por estos gastos.

Firma Sandra Russo Fecha 07-19-95

Envie su solicitud a: AMWAY/MCI SERVICE DEPARTMENT 78-4B,  
7575 FULTON STREET, EAST, ADA, MI 49357-0001.

ATTACHMENT 2

Casimiro and Connie Gonzales,

File No. IC-95-23743

Kathleen M.H. Wallman  
Federal Communications Commission  
Telephone Regulations Division  
Washington, D.C. 20554  
Page 2

We wondered, how could a company change [\*\*19] a customer's account without the written authorization of that customer? So we called our telephone company, GTE and asked them the same question. They verified that the change had been made by Amway but could offer no proof of our authorization.

Our next step was to contact Amway. I spoke to a very pleasant woman by the name of Maggie. She asked for my telephone number, and area code, and with just those 11 numbers she was able to tell me who I was, where I lived (which is a very scary prospect in itself). Maggie told me "you" signed an application to change long-distance carriers. I assured her no one had signed any application and she said the application had been submitted by Amway dealer, Melvin Martinez. I emphatically denied knowing anyone by that name and requested a copy of the application. Maggie suggested perhaps there was an "unscrupulous dealer out there." Maggie said I would receive a copy of the application in approximately two weeks, and in the meantime she would turn the incident over to their Business Conduct and Rules committee.

On August 28th, we received a copy of the signed application. The signature on the application is a forgery. And not a very good one. [\*\*20] One would think if you were going to take the trouble to forge a signature you would at least spell the name correctly! Our last name is spelled GONZALES, the signature on the application has a "z" on the end.

It appears Mr. Martinez needed to meet a quota and figured another dumb mexican wouldn't know the difference, and signed the form. What worries me is how many others has he signed that no one has questioned. Enclosed is an article from the August 15, 1995 issue of the Los Angeles Times on just this problem. Ms. Wallman, we have been slammed!

When we stated to GTE that we were going to write a letter to the FCC and the PUC to complain about this incident, we were told it would not do any good.

11 FCC Rcd 1821, \*1824; 1996 FCC LEXIS 242, \*\*20

Please investigate these practices by these companies and prove GTE wrong.

Your cooperation is greatly appreciated. If you require additional information, or if we can assist you in stopping this practice, please feel free to contact us.

Sincerely:

Casimiro Gonzales  
(818) 367-0902

Connie C. Gonzales

(310) 414-8300, ext. 120

Enclosures

cc: Herschel Elkins/California Consumer Law

Public Utilities Commission

GTE California, Inc.

AT&T

Amway

Letter of Authorization [\*\*21]

Distributor Information

A.D.A.

Distributor Name MELVIN / ADRIANA MARTINEZ

Distributor Address [ILLEGIBLE WORDS]

City

Is the customer an Amway Distributor? Yes No x

Distributor Signature [ILLEGIBLE SIGNATURE] Date 07-03-95

Customer Information

Last Name Gonzalez First Name Casimiro

Address 13701 Olgoanti Ave.

City Sylmar State CA Zip Code 91343

Phone number to be serviced (818) 367 0902

Number of Free MCI Cards

Friends & Family International #'s

[ ] Basic Dial "1" Service 1.

[x] Friends and Family (NEW) 2.